

REMARKS

Applicants respectfully request reconsideration. Claims 1, 4-9, 13-17, 20-22, 29-33 and 44-48 were previously pending in this application. Claims 1, 4, 8-9, 14-16, and 33 have been amended herein. No claims have been added or canceled. As a result, claims 1, 4-9, 13-17, 20-22, 29-33 and 44-48 are pending for examination with claims 1, 17, 32, and 33 being independent claims. No new matter has been added.

I. Claim Rejections under 35 U.S.C. §102

Independent claims 1, 7, and 32 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 4,901,096 ("Lemelson"). Applicants respectfully disagree.

A. Independent Claim 1 and its Dependents

Independent claim 1 is directed to a portable recall device configured to be carried by a wearer. The portable recall device comprises a controller "to determine whether to capture an image using [a] camera based at least in part on *whether a change in a level of the ambient light ... is above a first threshold*" (emphasis added).

As understood, Lemelson is directed to a camera that can be controlled to "prevent the recording of picture information which is blurred due to camera movement" (Lemelson, Abstract). Lemelson describes that a camera may be operated to capture an image in response to a lever or button being pushed indicating that a user wishes to capture an image (Col. 2, lines 39-48 and lines 63-65). When the user operates the button or lever to capture an image, the shutter is opened (Col. 2, lines 48-52). The shutter may be opened for an adjustable amount of time based on a metering of an amount of ambient light, such that the exposure time may be shortened or lengthened based on the amount of ambient light (Col. 3, lines 4-11). Additionally, a motion sensor may be used to determine whether a camera is moving and, if it is determined that the camera is moving, temporarily prevent or delay an image from being captured (Col. 3, lines 12-29).

In Lemelson, a manual button or lever is used to determine *whether* to take a picture using the camera. When the manual button or lever of Lemelson is actuated by the user, a picture will be taken (Lemelson, col. 3, lines 23-29; col. 3, lines 39-47). Other components of the camera determine *how* and *when* to take the picture. The light sensor of Lemelson is used to determine

how to take a picture, in that the light sensor is used to control a length of time the shutter is open based on an amount of ambient light (Col. 3, lines 4-11). The light sensor of Lemelson is not used to determine *whether* to take a picture. The accelerometer of Lemelson can be used, after the push button or lever has been operated by the user, to “prevent” the shutter mechanism drive motor from operating “until [the accelerometer 16] fails to sense camera movement whereafter drive 18 is activated” to cause the shutter to open and close (Col. 3, lines 20-29). The accelerometer of Lemelson does not affect *whether* a picture will be taken, but rather only *when* a picture will be taken. After the push button or lever is pushed, a picture will be taken, though the accelerometer can “prevent” the picture from being taken “until” the camera is held still (Col. 3, lines 20-29).

Accordingly, the camera of Lemelson determines *whether* to take a picture based only on the button or lever.

Though, even if it could be said that some component of Lemelson other than the button/lever is used to determine whether to take a picture, it cannot be said that Lemelson describes a controller to determine whether to capture an image based at least in part on “whether a change in a level of the ambient light ... is above a first threshold,” as recited by claim 1. The light sensor of Lemelson is not used to determine whether to capture an image.

Further, Lemelson appears to describe that a shutter may be operated to be open a “select time interval” based on an *amount* of ambient light (Lemelson, col. 3, lines 5-8). Lemelson does not describe, though, any action that may be taken based on a *change* in a level in ambient light. An amount of the ambient light is not the same as a “change in a level of the ambient light.” As Lemelson does not describe any action that may be taken based on a “change in a level of the ambient light,” Lemelson cannot describe a controller to “determine whether to capture an image using the camera based at least in part on whether a change in a level of the ambient light ... is above a first threshold,” as recited by claim 1.

Therefore, for at least these reasons, claim 1 patentably distinguishes Lemelson and should be allowed. Claims 4, 7-9, 13-16, and 44 depend from claim 1, and should be allowed for at least the same reasons. Withdrawal of these rejections is respectfully requested.

B. Other claims

Each of the other claims 17, 20-22, 29-32, 45, 47, and 48—including independent claims 17 and 32—distinguish Lemelson for at least reasons that should be appreciated from the foregoing. For example:

- independent claim 17 recites a method comprising “determining whether a capture condition is satisfied by comparing a change in the at least one ambient condition to at least one second threshold” and “determining whether to capture an image based at least in part on whether the capture condition is satisfied;”

- independent claim 32 recites a computer readable storage medium encoded with instructions that cause a computer to perform a method comprising “detecting whether a capture condition is satisfied by ... comparing a change in the at least one ambient condition to a first threshold” and “determining whether to capture an image based at least in part on whether [a] capture condition is satisfied;”

As discussed above, Lemelson describes that a picture is taken in response to manual operation of a button or lever of the camera. Lemelson does not describe determining *whether* to capture an image based on a *change* in at least one ambient condition.

Therefore, for at least these reasons, claims 17 and 32 patentably distinguish Lemelson and are allowable. Claims 20-22, 29-31, 45, 47, and 48 depend from claim 17 and are allowable for at least the same reasons. Withdrawal of these rejections is respectfully requested.

II. Claim Rejections under 35 U.S.C. §103

Independent claim 33 was rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lemelson in view of U.S. Patent No. 5,978,603 (“Shiozaki”). Applicants respectfully disagree.

For reasons that should be appreciated from the foregoing discussion, Lemelson does not teach or suggest a digital media player comprising “a controller ... to determine whether to capture an image based at least in part on whether a change in a level of the ambient light is above a first threshold,” as recited by claim 33.

Shiozaki describes a camera having a camera body of a particular shape (Shiozaki, col. 1, line 62, to col. 2, line 10). Shiozaki is not cited as teaching the limitations highlighted above not met by Lemelson.

As neither reference teaches or suggests the controller recited by claim 33, no modification of Lemelson based on Shiozaki could teach or suggest all limitations of claim 33.

Therefore, for at least these reasons, claim 33 patentably distinguishes any combination of Lemelson and Shiozaki and is allowable. Claim 46 depends from claim 33 and is allowable for at least the same reasons. Withdrawal of these rejections is respectfully requested.

III. General Comments on Dependent Claims

Each of the dependent claims depends from a base claim that is believed to be in condition for allowance, and Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. Applicants do not, however, necessarily concur with the interpretation of the dependent claims as set forth in the Office Action, nor do Applicants concur that the basis for the rejection of any of the dependent claims is proper. Therefore, Applicants reserve the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. M1103.70797US00.

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Respectfully submitted,

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